

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the California PUC for Waiver of)	CC Docket No. 99-200
The Federal Communications Commission's)	
Contamination Threshold Rule)	
)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Lawrence R. Krevor
Laura L. Holloway
Garnet M. Goins

Laura H. Phillips
Laura S. Gallagher
Debrea M. Terwilliger

NEXTEL COMMUNICATIONS, INC.

2001 Edmund Halley Drive
Reston, Virginia 20191

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DRINKER BIDDLE & REATH LLP

1500 K Street, N.W., Suite 1100
Washington, DC 20005-1209

Its Attorneys

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SUMMARY

The California Public Utilities Commission Petition to increase the contamination threshold is nothing more than a back door attempt by the CPUC to bypass the FCC's uniform federal area code relief policies and establish a unique set of numbering rules that ultimately discriminate against carriers and do little if anything to promote number conservation. Not only would the requested relief impose undue costs on nationwide and regional carriers, as well as consumers, but it would set a dangerous precedent for other states to follow suit to request unwarranted and costly numbering authority and avoid FCC-mandated relief measures.

The proposal to increase the 10% thousands-block contamination to 25% represents an increase in contamination on the order of 150%. This 25% threshold is totally arbitrary and unsupported by relevant data. Indeed, the data the CPUC relies upon to prove the efficiency of an increased contamination level fails to take into account the benefits of nationwide pooling generally and wireless carrier pooling in particular. The benefits to be gained from the proposed contamination threshold increase are equally dubious. There simply is no reason to believe that the CPUC will obtain a significant number of thousand blocks back through the increase. Further, the CPUC's chosen tool is ineffective as an increase from 10% to 25% is likely to forestall number exhaust in high utilization NPAs by a month or two at the most.

The report forwarded by the North American Numbering Council to the FCC further demonstrates the impracticability of the CPUC proposal. That report – the IMG Report – reaches two inconsistent conclusions regarding the proposal's viability and ultimately acknowledges the substantial costs as well as risks to consumers arising from an increase in the contamination threshold. Critically, the IMG Report substantiates that only one month of

additional life will be gained for both the 310 and 909 NPAs – two codes facing imminent exhaust.

What is crystal clear is the costs to carriers and customers that will be incurred should the Commission grant the relief request, as well as the discriminatory effect such relief will have on wireless carriers. Carriers that have an expanding subscriber base necessarily require added numbering resources; wireless carriers continue to have a robust demand for number resources consistent with their continuing subscriber growth. Wireless carriers will undoubtedly bear the brunt of the increased costs that necessarily arise in requiring carriers to port out up to 250 numbers every time they receive a new thousands-block. Wireless carriers also will have to request number blocks far more often if a large portion of numbers in the blocks they receive are unusable. Number conservation measures that negatively affect a particular segment of the industry as well as telecommunications subscribers are unlawful and wholly outside of the range of acceptable methods for area code relief adopted by the Commission. Plainly, the benefits of a contamination threshold increase are diminutive, when compared to the costs incurred by carriers and customers alike.

The Commission must reject the CPUC's attempts to chip away at the core of the FCC's nationwide numbering resource optimization rules. California, like all other states, must first exhaust all other alternatives within its grasp, such as area code relief, before it can be permitted to institute state-specific rules that increase subscriber and carrier costs, and unreasonably discriminate among classes of carriers.

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Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby files comments on the California Public Utilities Commission ("CPUC") petition seeking a waiver of the Federal Communications Commission's ("FCC" or "Commission") rules requiring pooling carriers to donate thousands-blocks of numbers with up to a 10% contamination threshold to number pools.¹ The CPUC seeks authorization to apply an increased contamination threshold of 25%, claiming that such an increase is justified to address the severe number shortage in California and will serve the public interest.²

¹ Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communications Commission's Contamination Threshold Rule, *Public Notice*, CC Docket No. 99-200 (rel. Oct. 24, 2002) ("*Public Notice*"); see 47 C.F.R. § 52.20(c)(1).

² Petition of the California Public Utilities Commission and of the People of the State of California for Waiver of the Federal Communications Commission's Contamination Threshold, CC Docket No. 99-200 (filed Sept.5, 2002) ("CPUC Petition"); Motion to Accept Supplemental Data With Respect to the California Public Utilities Commission and the People of the State of California's Petition for Waiver of the Federal Communication Commission's Contamination Threshold Rule, CC Docket Nos. 99-200, 96-98, 95-116 (filed Oct. 17, 2002) ("Supplemental Data Motion").

Nextel is a nationwide Commercial Mobile Radio Service (“CMRS”) provider that, along with Nextel Partners,³ has operations in 197 of the top 200 of the nation’s metropolitan areas. As a nationwide CMRS carrier that depends upon uniform national requirements for the provision of CMRS service to customers nationwide, Nextel opposes the CPUC Petition and urges the FCC to reject the relief sought therein. If granted, the requested relief would not only set a disconcerting precedent for state-specific numbering rules, but it also would impose unnecessary costs on nationwide and regional carriers and their customers, while providing little to no numbering relief.⁴

I. INTRODUCTION.

The instant Petition is the latest in a series of attempts by the CPUC to avoid area code relief through the pursuit of an increasing array of California-specific numbering rules and policies. Time and again, the CPUC has simply chosen not to do appropriate and timely area code relief. This current proposal to increase the 10% thousands-block contamination levels by 150% would circumvent any uniform application of the FCC’s numbering rules and policies, while failing to provide any meaningful benefit in the area codes most in jeopardy of exhaust. Thus, the purported benefits of using a 25% contamination threshold to stave off anticipated number exhaust in high utilization NPAs by a month or two are insubstantial when compared to the alternatives already available to the CPUC and the costs a higher California-specific contamination threshold

³ Nextel Partners provides wireless digital communications services in mid-sized and smaller markets throughout the United States.

⁴ The CPUC Petition is untimely. Despite labeling the petition as a request for a waiver, the CPUC seeks in essence reconsideration of the FCC’s decision, after full notice and comment in which the CPUC participated, to adopt a 10% contamination threshold nationwide. The FCC adopted the 10% contamination rule on March 17, 2000, well over two and a half years ago. Thus, the instant petition is essentially a late-filed request for reconsideration of the established rule and should be summarily dismissed on these grounds alone.

will entail for carriers, and by extension, end user customers. The 25% threshold chosen by California is totally arbitrary and there is no guarantee that the CPUC or other commissions will not seek to apply different percentage increases in the future, which would further complicate any carrier's ability to operate on a nationwide basis.

The Commission has adopted a range of acceptable methods for area code relief that are readily available to the states to be implemented under delegated authority. Relying heavily upon the input of the CPUC and other state commissions, the Commission has required that all carriers, including wireless carriers, implement thousands-block number pooling as an important tool to assist in number conservation. By this Petition, the CPUC has chosen not to wait to see the results of number pooling – which wireless carriers implemented only a few weeks ago – and, instead, seeks to second guess the Commission's judgment of appropriate numbering policies in a manner that ignores the need for truly national numbering policies.⁵

II. ANY INCREASE TO THE CONTAMINATION THRESHOLD UNDERMINES THE FCC'S UNIFORM NUMBER CONSERVATION REGIME.

Congress granted the Commission plenary authority over numbering administration. Section 251(e)(1) of the Communications Act of 1934, as amended by the 1996 Act, allows the FCC to delegate to state commissions or other entities all or any portion of its jurisdiction over numbering administration. In the *Local Competition Second Report and Order*, states initially were delegated authority to determine the type of area code relief that should be implemented in a

⁵ Indeed, the CPUC filed its Petition relying on data current as of December 31, 2001. *See* CPUC Petition at Attachment. The CPUC, however, filed its Supplemental Data Motion, citing number utilization data current at of June 30, 2002. Therefore, the data the CPUC is relying on to make the case that it absolutely needs to increase the contamination threshold is stale and does not take into account the enormous number conservation benefits of number pooling since June 2002.

particular state, *i.e.*, area code overlays; geographic splits; or area code boundary realignments.⁶

According to the Commission, this delegation made good practical sense because the states were positioned to determine which type of area code relief would best serve local needs.

In September of 1998, the FCC, in the *Pennsylvania Numbering Order*, delegated additional *limited* authority to state commissions to order NXX code rationing in conjunction with area code relief decisions, in the absence of industry consensus.⁷ In that *Order*, the FCC also allowed state commissions to seek further limited delegations of authority to implement number conservation measures.⁸ Critically, however, the Commission retained jurisdiction over all matters it did not *specifically* delegate to a state.⁹ *The Commission specifically determined that state commission implementation of number conservation measures cannot be used “as substitutes*

⁶ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et. al., *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996) (“*Local Competition Second Report and Order*”).

⁷ Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 19009, 19025 (1998) (“*Pennsylvania Numbering Order*”); see also Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 16 FCC Rcd 306, 341-43 (2000) (addressing petitions for clarification and reconsideration that were filed in response to the *Pennsylvania Numbering Order*).

⁸ *Pennsylvania Numbering Order*, 13 FCC Rcd at 19030.

⁹ *Local Competition Second Report and Order*, 11 FCC Rcd at 19512, 19516 (“We retain our authority to set policy with respect to all facets of numbering administration in the United States. By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act.”).

*for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief.”*¹⁰

Since the FCC permitted the states to petition for additional authority, the CPUC has continually petitioned the FCC for waivers of the national numbering rules or for authority to implement numbering policies that are typically not permitted under the FCC’s uniform but flexible federal regulations. Contrary to the FCC’s policy to advance area code relief, the CPUC has tried to evade its responsibilities by seeking authority to implement a number of “quick-fix” number conservation measures. In addition to the CPUC’s petition for delegated authority – in which the FCC conditionally granted the CPUC the authority to institute thousands-block pooling trials, establish usage thresholds, reclaim unused and reserved NXX codes, require sequential number assignments, and hear and address claims of carriers requesting numbering resources outside of rationing procedures – the CPUC has proposed to establish area codes for wireless phones and pagers only, has urged the Commission to give states additional authority to narrow the definition of reserved numbers and to set time limits on reserved numbers, and has filed a petition with the Commission for authority to implement a service specific overlay that would require a take-back of wireless numbers.¹¹

California’s continued requests to the FCC to deviate from federal area code relief measures demonstrates a lack of regard for federal numbering resource optimization rules and

¹⁰ *Pennsylvania Numbering Order*, 13 FCC Rcd at 19027.

¹¹ *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000) (“*First Report and Order*”); California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, *Order*, 14 FCC Rcd 17486 (1999) (“*California Delegation Order*”); Petition of the California Public Utilities Commission and of the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment, CC Docket Nos. 99-200, 96-98 (filed Sept. 27, 2002) (“TSO Petition”).

policies.¹² Indeed, the CPUC's agenda, reflected in its submission to the North American Numbering Council's ("NANC") recently filed Issue Management Group ("IMG") Report, is to use a higher contamination threshold to forestall the need for area code relief throughout California. This agenda is antithetical to established federal policy. While the FCC has stated its willingness to consider deviations from national policies where clear benefits can be demonstrated, deviations have only been permitted when all other options have been exhausted. Here, the CPUC has not provided area code relief.

The impact of California-specific rules and policies is not simply an inconvenience for carriers and their customers – they impose real operational costs and technical challenges. Nationwide wireless carriers, like Nextel, have established nationwide procedures for numbering administration efforts across the country. Nextel has worked hard in California and elsewhere to assist in number conservation and to prevent area code exhaust. Nextel has participated in the California number lotteries and has – but for a bit of luck – been very close to having to turn away new customers in high growth codes as a direct result of the CPUC's continuing refusal to perform code relief prior to an exhaust situation. Nextel has also participated in California's thousands-block number pooling trials.

The CPUC has failed to demonstrate any real benefit of a California-specific contamination threshold. The CPUC has offered no information or data to show that such increase would materially improve California's numbering crises, particularly in area codes where the need is the greatest. It certainly is making no claim that the relief it seeks will have any beneficial effect on carriers, such as eliminating the number lotteries or extending the life of near-exhaust

¹² See TSO Petition; Petition for Waiver, CC Docket No. 99-200 (filed Aug. 9, 2000) (requesting waiver of the Commission's requirements that states had to conform their pooling trials with the Commission's national pooling rules by September 1, 2000).

codes by a meaningful length of time. Rather, the relevant data contained in the IMG Report forwarded to the FCC from the NANC shows that in those areas facing the most severe numbering crises, *i.e.*, the 310 and 909 NPAs, an increase of the contamination threshold would only extend the life of these particular codes by approximately *one* month.¹³ Any reasonable cost-benefit analysis would suggest that the costs far outweigh the benefits of applying a higher California-specific contamination threshold.¹⁴

Despite continued carrier efforts to conserve numbers, the CPUC is dismissive of the idea that state-specific rules create new costs for national and regional carriers and that these costs ultimately are borne by wireless subscribers, including those in California. For example, nearly all wireless carriers operating today are nationwide or regional carriers. Rules that are applied on a nationwide basis decrease costs and thereby increase efficiencies and improve customer service.¹⁵ Carriers that must make technical or policy changes for individual states incur increased costs as a result of the state-specific rules. California should not keep returning to the FCC seeking additional authority to operate differently within its borders. Instead, California should first use the area code relief tools already at its disposal, rather than continually seeking special relief and

¹³ NANC Contamination Levels Issue Management Group, Report on the Technical Viability of Increasing the Pooling Contamination Threshold, at 12-13 (filed Dec. 11, 2002) (“IMG Report”).

¹⁴ See *infra* Section V.

¹⁵ Omnibus Budget Reconciliation Act of 1993, P.L. No. 103-66, §6002(b), 107 Stat 312, 392 (1993) (codified at 47 USC §§309(j) and 332). In adopting one set of nationwide criteria for CMRS, Congress has found that competition can foster in an environment that regulates carriers with a consistent set of nationwide standards. In the 1993 Budget Act, Congress set forth in Section 332(c)(3) that states were preempted by the Commission from regulating CMRS rates, except for the terms and conditions of CMRS service. “The statutory plan that Congress adopted clearly indicates its intention to promote an economically vibrant and competitive nationwide market for commercial mobile radio services.” Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, 11 FCC Rcd 5020, 5064 (1996).

claiming that California is more unique than those states where traditional area code relief is working well within the established federal framework.

III. THE COMMISSION WOULD FRACTURE AN IMPORTANT NATIONAL NUMBERING POLICY WERE IT TO GRANT THE WAIVER.

The Commission cannot act on this waiver request in a manner that offers states any escape from planning and implementing responsible and timely area code relief. Indeed, the Commission already has determined that thousands-block pooling, in conjunction with appropriate area code relief, constitute the best means to optimize number resources nationwide. To its credit, the CPUC strongly supported thousands-block number pooling as an important tool to address number resource constraints. Rather than rushing to change significant aspects of the way thousands-block pooling works before the efficacy of pooling can be assessed, the CPUC should at least await the outcome of the conservation efforts the FCC has already adopted. The imposition of California-specific contamination rules is unnecessary, premature, and of no substantial benefit. In making its case that an increase in the contamination threshold is necessary, the CPUC relied on data gathered prior to the national rollout of pooling, including the advent of wireless carrier pooling just last month. Until the full effects of pooling can be measured, no one can reasonably assess whether this waiver is necessary or whether it is just another attempt by the CPUC to set up its own unique numbering policies.

Moreover, although the CPUC justifies its waiver request by alleging a unique numbering crunch, other states have had similar numbering exhaust problems in critical NPAs and have opted to provide area code relief in the form of a geographic area code split or an all-services overlay. The FCC, as a matter of policy, should encourage states to work within the framework the FCC already has established and that has worked well in other states.

IV. THE WAIVER WOULD IMPOSE COSTLY BURDENS ON CARRIERS AND WOULD DISPROPORTIONATELY AND ADVERSELY AFFECT CARRIERS REQUIRING THE MOST NUMBERS.

It is understood that the imposition of any contamination level has a cost on all carriers. Any decision to raise the present 10% contamination level by 150%, therefore, will have enormous technical cost implications for carriers, particularly those carriers who have the largest overall demand for numbering resources. Moreover, a decision to increase the contamination threshold will also impose additional California-specific pooling costs on carriers.

When carriers receive contaminated blocks of numbers, they are required to port out the “contaminated” numbers to the donating carrier so that the carrier donating the block to the pool can continue to provide services to its customer.¹⁶ As the CPUC is aware, there is already a cost to carriers associated with pooling using a 10% contamination threshold. Indeed, under a 10% contamination threshold, up to 100 numbers must be marked as ported out to the donating carrier. This manual process is required to be in place in all carriers’ switches.

An increase in the contamination threshold to 25% will necessarily require that up to 250 numbers to be ported out every time a carrier receives a contaminated thousands-block. This 150% increase in numbers that have to be manually processed would create additional costs on all carriers, but would more drastically affect wireless carriers, which have a significantly larger current demand for number resources than do other carriers. In particular, wireless carriers and ILECs, who assign far more numbers than CLECs and paging carriers, will be faced with the increased costs of manually entering for each thousands-block assigned, up to 250 numbers as

¹⁶ *First Report and Order*, 15 FCC Rcd at 7662.

ported out.¹⁷ In addition, wireless carriers, which have a higher customer growth rate, will have to make this accommodation far more often than other carriers since they will be requesting and receiving more new thousands-blocks from the pool. Given the demand for wireless service, wireless carriers in particular will quickly use up the remaining 750 numbers in each thousands-block they are assigned and will have to return repeatedly for additional blocks – each of which will have more costly higher contamination levels associated with them.

Increasing the contamination threshold is not a costless activity. Manually marking up to 250 numbers as ported out to the donating carrier imposes huge costs on all carriers. In fact, the costs associated with these additional manual entries will far outweigh any benefit the CPUC claims would be derived from increasing the contamination threshold.

Carriers have already demonstrated to the Commission the potentially dangerous dislocations and customer costs that can occur when any contamination level is applied and particularly when it is increased. In the first *Notice of Proposed Rulemaking* in the Numbering Resource Optimization docket, for example, the FCC weighed requests for either a 10% and 25% uniform national contamination level.¹⁸ Commenting on this issue, GTE stated that imposing any contamination threshold on carriers “is detrimental to all industry segments porting numbers because of the increased complexity and cost contamination brings to the process.”¹⁹ In fact, GTE

¹⁷ Numbering Resource Utilization in the United States as of December 31, 2001, Table 1, *at* <http://www.fcc.gov/wcb/iatd/number.html> (rel. Aug. 1, 2002). Cellular/PCS carriers assigned 128,493 numbers and ILECs assigned 305,430 numbers as of December 31, 2001, while CLEC and paging carriers assigned only 30,941 and 18,001 numbers, respectively.

¹⁸ Numbering Resource Optimization, *Notice of Proposed Rulemaking*, 14 FCC Rcd 10322, 10403-04 (1999) (“*Numbering NPRM*”).

¹⁹ GTE Comments at 54-55, Numbering Resources Optimization, CC Docket No. 99-200 (July 30, 1999) (“GTE Comments”).

stated that any contamination level above zero creates a risk that a customer's service will be disrupted:

The increased cost and complexity result from the fact that, ordinarily, working customer numbers within the thousand-block being ported need to receive special treatment in *both* companies' switches during and after transition. Working customer numbers must be ported back into the original serving switch and marked as not available for assignment in the porting-to switch. Failure to handle these numbers properly will result in two customers being assigned the same number on different switches, and contamination only increases the probability of this occurring.²⁰

Carriers also commented that any level above a 10% contamination threshold would have diminishing returns. For example, Bell Atlantic (now Verizon) stated that "there will be diminishing returns on resource donation as the contamination level is increased, while at the same time increasing the complexity and cost of block donation due to higher levels of intra-service provider ports that will be required for each block that is donated."²¹

Upon consideration of these comments and other comments, including those of the CPUC, the FCC concluded that the 10% threshold is the appropriate uniform national contamination level and determined that state-specific setting of other levels was not in the public interest.²² Because the risk of interrupting customer service is real, and may take on even greater significance in the case of restoration of service in a national emergency, the FCC should be cautious in giving the green light to higher state-specific contamination levels.

²⁰ *Id.* at 55.

²¹ Bell Atlantic Comments at 30, Numbering Resources Optimization, CC Docket No. 99-200 (July 30, 1999).

²² It is somewhat ironic that the states themselves recommended that the FCC establish a uniform contamination threshold in their joint recommendation to the FCC on pooling. *Numbering NPRM*, 14 FCC Rcd at 10404 (noting MediaOne's proposal that the contamination level for ILECs should be at least 25%, but should only be 10% for CLECs); CPUC Comments at 35, Numbering Resource Optimization, CC Docket No. 99-200 (July 30, 1999) (stating that the CPUC agrees with (continued...))

If the Commission grants this waiver, wireless carriers will be burdened with these increased administrative burdens while simultaneously incurring the costs of becoming LNP-capable. The Commission has noted in the past the benefits to carriers of not having to implement two technologically burdensome tasks at the same time. In deciding to not require wireless carriers to implement LNP by November 24, 2002, the Commission stated that a one-year extension of the LNP requirements “will allow carriers to focus on the successful implementation of thousands-block number pooling and to guard against any potential network disruptions that might result from simultaneous implementation of the thousands-block numbering pooling and porting.”²³ The burdens that would be imposed as a result of a grant of this waiver should not be coupled with the requirement of wireless carriers to be LNP capable by November 2003.

The CPUC justifies its waiver by stating that its numbering shortage is unique, and that this severe shortage supports its deviation from the Commission’s standard 10% contamination threshold.²⁴ California’s numbering shortage is not so unique, as other states have also faced severe numbering shortages; however, those states acted to provide the relief intended by the FCC’s numbering policies. In 2001, for example, Michigan adopted area code relief for two NPAs.²⁵ Facing number shortages in the 810 and 616 area codes, Michigan opted to use

(..continued)

the state recommendation “that the same initial contamination threshold should apply to all industry segments”).

²³ Verizon Wireless’ Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, 14981 (2002).

²⁴ CPUC Petition at 2.

²⁵ On the Commission’s own Motion, to Consider Implementation of an 810 Area Code Relief Plan, Case No. U-12588, 2001 Mich. PSC LEXIS 497 (rel. Dec. 20, 2001); On the Commission’s own Motion, to Consider Implementation of a 616 Area Code Relief Plan, Case No. U-12850, 2001 Mich. PSC LEXIS 385 (rel. Oct. 11, 2001).

traditional area code relief in the form of a geographic split and an all-services overlay. Illinois, facing the exhaustion of the 773 and 312 NPAs, also opted for an all-services overlay to solve its numbering issues.²⁶ Other states facing numbering exhaust have taken appropriate action to resolve their problems. The only thing “unique” about California’s numbering problems, therefore, is the state’s continued failure to order necessary area code relief.²⁷

V. THE NANC TECHNICAL VIABILITY ASSESSMENT DEMONSTRATES THAT A CALIFORNIA-SPECIFIC CONTAMINATION THRESHOLD IS NOT VIABLE.

As part of its effort to review the technical challenges associated with the CPUC’s waiver proposal, the Commission requested that the NANC “evaluate the technical viability of increasing the contamination level.”²⁸ The NANC, in turn, created an Issue Management Group, to perform this evaluation. The IMG’s Report, recently forwarded to the Commission by NANC, is noteworthy in that, based upon two separate analyses of the effects of increasing the contamination level on the extension of the life of area codes, rate centers and the retrieval of stranded numbers, it reaches two inconsistent conclusions regarding the viability of the CPUC proposal. The report makes no recommendation for a particular action on the CPUC’s petition but recommends that the FCC view the report in its totality and weigh the comments of the stakeholders.

²⁶ Illinois Commerce Commission, On its own Motion, Investigation into the Requirement for a Single Overlay for the 312 and 773 NPAs, 02-0093, 2002 Ill. PUC LEXIS 109 (rel. Jan. 24, 2002).

²⁷ *California Delegation Order*, 14 FCC Rcd at 17496. The Commission itself has warned the CPUC that ultimately, California is obligated to implement area code relief. In the *California Delegation Order*, after permitting the CPUC to implement thousands-block number pooling trials before the national rollout of pooling, the Commission stated: “We reiterate that the authority we grant herein to the California Commission to undertake a thousands-block pooling trial is interim in nature, and is in no way intended to relieve the California Commission of its obligation to implement necessary area code relief in a timely fashion.”

²⁸ *Public Notice* at 2.

The IMG Report makes a critical distinction between what is technically feasible and what is technically viable and concludes that, at best, the proposal is feasible. As the report observes:

[W]ith enough time and enough financial and human resources, increasing the contamination level for donated blocks from 10 to 25 percent would be technically feasible. However, the technical viability of such a measure requires additional justification, since there are considerable efforts that are required to make this proposal viable. As a result, the IMG is providing the FCC a list of the cost related issues that should be considered and evaluated in determining the viability of the increased contamination proposal.²⁹

Importantly, the IMG Report did not attempt to quantify the actual costs of implementation, but did recognize that there were substantial costs as well as risks to consumers of additional service disruptions stemming from an increased contamination threshold.

Given the split in the basic analyses of the benefits of increasing the contamination threshold, it is perhaps surprising that both analyses come to almost exactly the same conclusion with respect to the benefits of increasing contamination levels in California's most exhausted NPAs: the 310 and 909 NPAs. For the 310 NPA, only a single month of additional life is gained. For the 909 NPA, Analysis A postulates a single month of additional life, while Analysis B postulates two months.³⁰ Both the industry analysis and the CPUC participant's analysis lead to the same conclusion: there is a *de minimis* benefit in the NPAs that are the most resource constrained in the state. Increasing the contamination threshold for California will result in additional substantial costs to carriers and their customers, thus there should be no question that the Commission should reject the CPUC's waiver request.

The IMG Report also confirms Nextel's view that fundamentally, the CPUC is grasping at straws in order to avoid the obvious and inevitable solution to the California numbering dilemma:

²⁹ IMG Report at 16, Findings and Conclusion A.

³⁰ *Id.* at 12-13.

area code relief. One justification mentioned in the IMG Report for avoiding area code relief is that the “costs to the public of undergoing an area code change, whether an overlay or a split, require the public to adjust to the change.”³¹ But, the need for area code relief in several of California’s most exhausted NPAs is obvious and cannot be put off even if the contamination threshold were to be increased. Even using the analysis most favorable to the CPUC’s position, the benefits of the proposal are outweighed by the costs.

³¹ *Id.* at 18, Findings and Conclusion B.

VI. CONCLUSION

Although the CPUC justifies its waiver request by citing its unique numbering crunch, other states have had similar numbering exhaust challenges and have opted to take a reasonable approach to the problem: area code relief. If after the effects of pooling are measured California decides it still needs additional numbering resources, it should take the steps that other states have taken – a step that is consistent with the FCC’s nationwide numbering policies – which is area code relief in the form of a geographic split or an all services overlay. As such, Nextel urges the Commission to act expeditiously to deny the CPUC contamination threshold waiver request.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

/s/ Laura H. Phillips

Laura H. Phillips

Laura S. Gallagher

Debra M. Terwilliger

Its Attorneys

DRINKER BIDDLE & REATH LLP

1500 K Street, N.W.

Suite 1100

Washington, DC 20005-1209

202-842-8800

Lawrence R. Krevor

Vice President of Government Affairs

Laura L. Holloway

Senior Director of Government Affairs

Garnet M. Goins

Attorney, Government Affairs

NEXTEL COMMUNICATIONS, INC.

2001 Edmund Halley Drive

Reston, Virginia 20191

December 13, 2002

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a legal secretary at Drinker Biddle & Reath LLP, do hereby certify that on this 13th day of December, 2002, a copy of the foregoing “**COMMENTS OF NEXTEL COMMUNICATIONS, INC.**,” was sent by first class, United States mail, postage prepaid, unless otherwise indicated, to each of the following:

Gary M. Cohen
Helen M. Mickiewicz
Lionel B. Wilson
Stacie M. Castro
State of California
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

*Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

/s/ Cynthia S. Shaw
Cynthia S. Shaw

* Hand delivered.